

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA**

\_\_\_\_\_, Individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

HORIZON BANCORP, INC., CRAIG M.  
DWIGHT, and MARK E. SECOR,

Defendants.

**Case No:**

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, among other things, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants’ public documents, public filings, wire and press releases published by and regarding Horizon Bancorp, Inc. (“Horizon” or the “Company”), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded Horizon securities between May 5, 2022 and March 10, 2023, inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’

violations of the federal securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C. §78aa).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants (defined below), directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

### **PARTIES**

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Horizon securities during the Class Period and was economically damaged thereby.

7. Defendant Horizon is a bank holding company, which engages in the provision of commercial and retail banking services. It offers personal banking, business banking, investment and trust, and mortgage services.

8. Defendant Horizon is incorporated in Indiana and its head office is located at 515 Franklin Street, Michigan City, Indiana 46360. Horizon securities trade on NASDAQ under the ticker symbol “HBNC.”

9. Defendant Craig M. Dwight (“Dwight”) has served as the Company’s Chairman since July 2014 and Chief Executive Officer (“CEO”) since January 2003.

10. Defendant Mark E. Secor (“Secor”) has served as the Company’s Executive Vice President since January 2014 and Chief Financial Officer (“CFO”) since January 2009.

11. Defendants Dwight and Secor are collectively referred to herein as the “Individual Defendants.”

12. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company’s internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or

(g) approved or ratified these statements in violation of the federal securities laws.

13. Horizon is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

14. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to Horizon under *respondeat superior* and agency principles.

15. Defendant Horizon and the Individual Defendants are collectively referred to herein as “Defendants.”

**SUBSTANTIVE ALLEGATIONS**  
**Materially False and Misleading**  
**Statements Issued During the Class Period**

16. On May 5, 2022, during market hours, Horizon filed with the Securities and Exchange Commission (“SEC”) its quarterly report on Form 10-K for the period ended March 31, 2022 (the “1Q2022 Report”). Attached to the 1Q2022 Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Dwight and Secor attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

17. The 1Q2022 Report failed to identify any material weaknesses regarding the Company’s internal controls by stating the following, in relevant part:

**Evaluation of Disclosure Controls and Procedures**

Based on an evaluation of disclosure controls and procedures as of March 31, 2022, Horizon’s Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of Horizon’s disclosure controls (as defined in Exchange Act Rule 13a–15(e) of the Securities Exchange Act of 1934 (the “Exchange Act”). ***Based on such evaluation, such officers have concluded that, as of the evaluation date, Horizon’s disclosure controls and procedures are effective to ensure that the information required to be disclosed by Horizon in***

*the reports it files under the Exchange Act is recorded, processed, summarized and reported within the time specified in Securities and Exchange Commission rules and forms and are designed to ensure that information required to be disclosed in those reports is accumulated and communicated to management as appropriate to allow timely decisions regarding disclosure.*

Changes in Internal Control Over Financial Reporting

Horizon’s management, including its Chief Executive Officer and Chief Financial Officer, also have concluded that during the fiscal quarter ended March 31, 2022, *there have been no changes in Horizon’s internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, Horizon’s internal control over financial reporting.*

(Emphasis added.)

18. On August 8, 2022, after market hours, Horizon filed with the SEC its quarterly report on Form 10-K for the period ended June 30, 2022 (the “2Q2022 Report”). Attached to the 2Q2022 Report were SOX certifications signed by Defendants Dwight and Secor attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

19. The 2Q2022 Report failed to identify any material weaknesses regarding the Company’s internal controls by stating the following, in relevant part:

Evaluation of Disclosure Controls and Procedures

Based on an evaluation of disclosure controls and procedures as of June 30, 2022, Horizon’s Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of Horizon’s disclosure controls (as defined in Exchange Act Rule 13a–15(e) of the Securities Exchange Act of 1934 (the “Exchange Act”). *Based on such evaluation, such officers have concluded that, as of the evaluation date, Horizon’s disclosure controls and procedures are effective to ensure that the information required to be disclosed by Horizon in the reports it files under the Exchange Act is recorded, processed, summarized and reported within the time specified in Securities and Exchange Commission rules and forms and are designed to ensure that information required to be disclosed in those reports is accumulated and communicated to management as appropriate to allow timely decisions regarding disclosure.*

Changes in Internal Control Over Financial Reporting

Horizon's management, including its Chief Executive Officer and Chief Financial Officer, also have concluded that during the fiscal quarter ended June 30, 2022, *there have been no changes in Horizon's internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, Horizon's internal control over financial reporting.*

(Emphasis added.)

20. On November 9, 2022, after market hours, Horizon filed with the SEC its quarterly report on Form 10-K for the period ended September 30, 2022 (the "3Q2022 Report"). Attached to the 3Q2022 Report were SOX certifications signed by Defendants Dwight and Secor attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

21. 19. The 3Q2022 Report failed to identify any material weaknesses regarding the Company's internal controls by stating the following, in relevant part:

#### Evaluation of Disclosure Controls and Procedures

Based on an evaluation of disclosure controls and procedures as of September 30, 2022, Horizon's Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of Horizon's disclosure controls (as defined in Exchange Act Rule 13a-15(e) of the Securities Exchange Act of 1934 (the "Exchange Act")). *Based on such evaluation, such officers have concluded that, as of the evaluation date, Horizon's disclosure controls and procedures are effective to ensure that the information required to be disclosed by Horizon in the reports it files under the Exchange Act is recorded, processed, summarized and reported within the time specified in Securities and Exchange Commission rules and forms and are designed to ensure that information required to be disclosed in those reports is accumulated and communicated to management as appropriate to allow timely decisions regarding disclosure.*

#### Changes in Internal Control Over Financial Reporting

Horizon's management, including its Chief Executive Officer and Chief Financial Officer, also have concluded that during the fiscal quarter ended September 30, 2022, *there have been no changes in Horizon's internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, Horizon's internal control over financial reporting.*

(Emphasis added.)

22. On January 25, 2023, after market hours, the Company issued a press release announcing earnings and other financial results for the three and twelve-month period ended December 31, 2022. The press release downplayed the serious issues with the Company's financial statements by stating the following, in relevant part:

*An accounting revision was made to amounts reported in previously issued financial statements covering the third quarter of 2022 related to immaterial errors discovered in the fourth quarter of 2022. The errors relate to the inclusion of the dealer reserve amortization expense in loan expense in non-interest expenses for the third quarter of 2022 rather than loan interest income.* The previously issued financial statements for the three and nine months dated September 30, 2022 have been revised to correct this error, which resulted in lowering both interest income and non-interest expense by \$1.5 million for the quarter and lowering net interest margin by ten basis points from the historical presentation of these amounts (See Exhibit 1 – Revision of Previously Issued Financial Statements for details). All periods presented reflect this adjustment, and there was no impact to net income.

\* \* \*

#### **Exhibit 1 – Revision of Previously Issued Financial Statements**

*We have revised amounts reported in previously issued financial statements for our third quarter 2022 results reflected in this press release related to immaterial errors. Subsequent to the third quarter of 2022, the Company's management determined that the dealer reserve amortization expense was incorrectly included in loan expense in non-interest expenses rather than loan interest income. In addition, the dealer reserve asset was incorrectly included with other assets on the balance sheet rather than included with loans.* As a result, loan interest income for the three and nine months ended September 30, 2022 has been revised to include dealer reserve amortization expense, and we have reversed the impact of the inclusion of the dealer reserve amortization expense in loan expense in non-interest expenses for the three and nine months ended September 30, 2022 and for all other prior periods presented. This revision for the third quarter reduced both loan interest income and loan expense by \$1.5 million, and lowered the net interest margin by ten basis points from the amounts previously reported in the interim condensed consolidated statements of income for the three and nine months ended September 30, 2022. Our financial statements for the quarter and year ended December 31, 2022 and December 31, 2021 set forth in this press release reflect the inclusion of the dealer reserve amortization expense in loan interest income for those periods.

*We evaluated the aggregate effects of the errors to our previously issued financial statements in accordance with SEC Staff Accounting Bulletins No. 99 and No. 108 and, based upon quantitative and qualitative factors, determined that the errors were not material to the previously issued financial statements and disclosures included in our Quarterly Reports on Form 10-Q for the quarterly period ended September 30, 2022.*

(Emphasis added.)

23. The statements contained in ¶¶ 16-22 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) Horizon continuously downplayed its serious issues with internal controls; (2) Horizon's financial statements from September 30, 2021 to the present included "certain errors"; (3) as a result, Horizon failed to timely file their periodic report with the SEC; (4) as a result, Horizon failed to satisfy the NASDAQ listing rule 5250(c)(1); and (5) as a result, Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

### **THE TRUTH EMERGES**

On March 10, 2023, after market hours, the Company issued a press release announcing it had received a letter from NASDAQ, as a result of not having timely filed its 2022 Annual Report by March 1, 2023 with the SEC, that it was not in compliance with NASDAQ listing rule 5250(c)(1). The notification of late filing on Form 12b-25 was signed by Defendant Secor. The press release stated in relevant part:

However, the Company has now concluded that *it made a calculation error in computing its public float and that it instead qualifies as a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act for purposes of its 2022 Form 10-K.* As a result, the filing deadline for the Company's 2022 Form 10-K

was March 1, 2023. The Company believes this is the first time in its history that it has failed to timely file a periodic report with the SEC or failed to satisfy a NASDAQ listing rule or requirement. The Company believes it is in compliance with all other NASDAQ listing standards and requirements. Notwithstanding the foregoing, the Company is reviewing its internal policies and procedures and updating them as necessary to ensure future compliance.

*Consistent with the previous disclosures made by the Company in its Form 12b-25 filed with the SEC on March 10, 2023, the Company has identified material weaknesses in the Company's internal controls over financial reporting relating to: (i) accounting revisions of previously issued financial statements with respect to the classification of sold commercial loan participation balances, the reporting of indirect loan dealer reserve asset balances and related amortization expense and the classification of certain available for sale and held to maturity securities from private labeled mortgage-backed pools to federal agency mortgage pool, which revisions were previously disclosed in the press release furnished as Exhibit 99.1 to the Company's Form 8-K filed January 25, 2023 (the "Earnings Release"), disclosing the Company's preliminary and unaudited results for the three and twelve months ended December 31, 2022, and the Company's Form 10-Q filings during 2022, in addition to errors in previously issued financial statement disclosures relating to the transfer of available for sale to held to maturity securities and the cash flow classification of repurchases of outstanding stock from an investing activity to a financing activity, which will be disclosed for the first time in the 2022 Form 10-K, and (ii) a calculation error in the Company's public float as noted above.*

*The Company does not expect to report any material changes to its financial results previously reported in the Earnings Release.*

(Emphasis added.)

24. On this news, Horizon's stock fell \$1.43, or 10.96%, to close at \$11.62 on March 13, 2023, the next trading day, damaging investors.

25. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common shares, Plaintiff and other Class members have suffered significant losses and damages.

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

26. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants

who acquired Horizon securities publicly traded on NASDAQ during the Class Period, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors of Horizon, members of the Individual Defendants’ immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

27. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Horizon securities were actively traded on NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

28. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants’ wrongful conduct in violation of federal law that is complained of herein.

29. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

30. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the Exchange Act was violated by Defendants’ acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of Horizon;

- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Defendants caused Horizon to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of Horizon securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

31. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

32. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Horizon shares met the requirements for listing, and were listed and actively traded on NASDAQ, an efficient market;
- As a public issuer, Horizon filed periodic public reports;
- Horizon regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of

press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;

- Horizon's securities were liquid and traded with moderate to heavy volume during the Class Period; and
- Horizon was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

33. Based on the foregoing, the market for Horizon securities promptly digested current information regarding Horizon from all publicly available sources and reflected such information in the prices of the shares, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

34. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

**COUNT I**  
**For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**  
**Against All Defendants**

35. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

36. This Count is asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

37. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

38. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Horizon securities during the Class Period.

39. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of Horizon were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of Horizon, their control over, and/or receipt and/or modification of Horizon's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning Horizon, participated in the fraudulent scheme alleged herein.

40. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Horizon personnel to members of the investing public, including Plaintiff and the Class.

41. As a result of the foregoing, the market price of Horizon securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of Horizon securities during the Class Period in purchasing Horizon securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

42. Had Plaintiff and the other members of the Class been aware that the market price of Horizon securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased Horizon securities at the artificially inflated prices that they did, or at all.

43. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

44. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of Horizon securities during the Class Period.

**COUNT II**  
**Violations of Section 20(a) of the Exchange Act**  
**Against the Individual Defendants**

45. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

46. During the Class Period, the Individual Defendants participated in the operation and management of Horizon, and conducted and participated, directly and indirectly, in the conduct of Horizon's business affairs. Because of their senior positions, they knew the adverse non-public information about Horizon's false financial statements.

47. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Horizon's financial condition and results of operations, and to correct promptly any public statements issued by Horizon which had become materially false or misleading.

48. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Horizon disseminated in the marketplace during the Class Period concerning Horizon's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Horizon to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Horizon within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Horizon securities.

49. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Horizon.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: